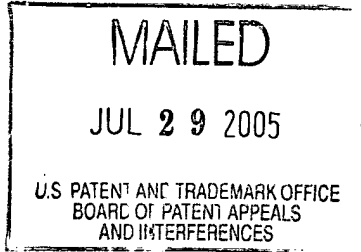


The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUCE CHRISTENSON
and
GARY VESELICA

Appeal No. 2005-1710
Application No. 10/057,474

ON BRIEF

Before KIMLIN, GARRIS and WARREN, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 6, 7, 9 and 10. Claim 6 is illustrative:

6. A vibration dampener comprising a metal weight, a precured elastomeric member and a metal hub adapted to attach to an automotive engine wherein said metal weight and said metal hub have a phosphate-coated surface and wherein said elastomeric member is compression fitted between said metal weight and said metal hub contacting said phosphate metal surfaces wherein said elastomeric member is selected from the group consisting of ethylene propylene diene monomer rubber and ethylene acrylate copolymer.

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The examiner relies upon the following references as evidence of obviousness:

Gaydecki	3,858,925	Jan. 7, 1975
Fishbaugh et al. (Fishbaugh)	4,073,047	Feb. 14, 1978
Ando et al. (Ando)	5,578,680	Nov. 26, 1996
Kingsly	6,082,721	Jul. 4, 2000

Appellants' claimed invention is directed to a vibration dampener comprising a pre-cured elastomer that is compression fitted between a metal weight and a metal hub. The surface of the metal weight and metal hub is phosphate-coated, and the elastomer is selected from either ethylene propylene diene monomer rubber or ethylene acrylate copolymer. Appellants submit that "[a]lthough it is known that phosphate treatment improves the adhesion between metal and rubber wherein the rubber is cured in contact with the phosphate coated surface, applicants' invention is the use of a pre-cured elastomeric member compression fitted between two phosphate coated metallic surfaces" (page 4 of principal brief, second paragraph). Also, appellants rely upon a declaration by one of the present inventors which demonstrates that the claimed elastomers show improved heat aging in comparison to other rubbers such as SBR and nitrile rubber.

Appealed claims 6, 7, 9 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fishbaugh in view of Kingsley and Gaydecki or Ando.

We have thoroughly reviewed the respective positions advanced by appellants and the examiner. In so doing, we find the claimed invention, as a whole, would not have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art, considered as a whole. Accordingly, we will not sustain the examiner's rejection.

As recognized by the examiner, Fishbaugh, the primary reference, while disclosing a pre-cured elastomer compression fitted between a metal weight and a metal hub, is silent with respect to the specific elastomer used and phosphate-coating the metal surfaces. The examiner, however, cites Kingsley for teaching a phosphate-coated metal surface that is interference-fitted with an elastomer. However, as emphasized by appellants, Kingsley "fails to disclose a pre-cured elastomeric member that is compression fitted against a phosphated surface" (page 6 of principal brief, last paragraph). Appellants explain that "[a]lthough it is known that the phosphating improves the adhesion when one cures the rubber next to the phosphated surface, it is not logical to conclude that this same result

would occur with a pre-cured compression fitted elastomeric member" (page 7 of principal brief, second paragraph). According to appellants, "as the uncured elastomer is in a liquid state, it has the ability to flow and subsequently cure in more intimate contact with the phosphated surface" (id.). Appellants contend that there would be no adhesion-promoting reaction between a phosphate-coated metal surface and a pre-cured elastomer. In response to appellants' argument, the examiner simply states "one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references . . . Kingsley is used solely for the teaching of the increased bonding strength found when bonding an elastomer to a phosphate coated metal surface" (paragraph bridging pages 3 and 4 of Answer). Hence, it can be seen that the examiner has not addressed appellants' argument that one would not expect increased bonding strength between a pre-cured elastomer and a phosphate-coated metal surface.

Also, in response to appellants' declaration that demonstrates unexpectedly improved heat aging for the claimed elastomers vis-à-vis other elastomers, the examiner states "[p]lease note that Kingsley teaches this feature in col. 6 lines 58-64 and column 8 lines 38-53" (page 3 of Answer, second

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paragraph). However, as noted by appellants, the sections of Kingsley cited by the examiner utterly fail to provide any teaching of improved heat aging.


In conclusion, it is our judgment that the evidence of nonobviousness presented by appellants outweighs the evidence of obviousness relied upon by the examiner. Accordingly, the examiner's decision rejecting the appealed claims is reversed.

REVERSED

Edward C. Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge


BRADLEY R. GARRIS
Administrative Patent Judge

BOARD OF PATENT
APPEALS AND
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CHARLES F. WARREN
Administrative Patent Judge

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